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NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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CLERK, U.S. DISTRICT COURT
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OAKLAND

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

The United States, and the States of California,
Texas, New York, and North Carolina,
ex rel. Randy Reagan and James Longfield,

Plaintiffs,

v.

MedTest Dx, Inc.,
a Delaware Corporation,

Defendant.

Case No. CV-13-2345 KAW
**UNITED STATES' NOTICE
OF ELECTION TO DECLINE
INTERVENTION AND REQUEST
FOR ENLARGEMENT OF TIME;**

[PROPOSED] ORDER

FILED UNDER SEAL

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States hereby notifies the Court of its decision not to intervene in this action. In addition, the States of California, New York, and North Carolina (the States) have advised the undersigned that they also decline to intervene in this action. Notwithstanding its declination decision, the United States requests that the action remain under seal until August 31, 2016, and that on September 1, 2016, the relator's Complaint, this Notice, and the attached proposed Order be unsealed. Relators have notified the undersigned that they wish to dismiss this action while the case is under seal, and that an additional sealing period, until August 31, 2016, will

U.S.' NOTICE OF ELECTION TO DECLINE INTERVENTION; [PROPOSED] ORDER
No. CV-13-2345 KAW

1 provide them the opportunity to prepare and file the dismissal motion. Therefore, the United States
2 respectfully requests that the seal and intervention deadline be extended until August 31, 2016. The
3 States concur in this request.

4 Although the United States declines to intervene, we respectfully refer the Court to 31 U.S.C.
5 § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing,
6 however, that the "action may be dismissed only if the court and the Attorney General give written
7 consent to the dismissal and their reasons for consenting." *Id.* The United States Court of Appeals for
8 the Ninth Circuit has held that, notwithstanding this language, the United States has the right only to a
9 hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*,
10 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th
11 Cir. 1994). Therefore, the United States requests that, should either the relators or the defendant propose
12 that this action be dismissed, settled, or otherwise discontinued, this Court provide the United States
13 with notice and an opportunity to be heard before ruling or granting its approval.

14 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that if relators
15 proceed with the action, all pleadings and motions filed in this action be served upon the United States.
16 The United States also requests that orders issued by the Court be sent to the undersigned Government's
17 counsel. The United States reserves its right to order any deposition transcripts, to intervene in this
18 action, for good cause, at a later date, and to seek the dismissal of the relators' action or claim. The
19 United States also requests that it be served with all notices of appeal.

20 Finally, the United States requests that the relators' Complaint, this Notice, and the attached
21 proposed Order be unsealed effective September 1, 2016. However, the United States requests that all
22 other papers on file in this action remain under seal because in discussing the content and extent of the
23


1 United States' investigation, such papers are provided by law to the Court alone for the sole purpose of
2 evaluating whether the seal and time for making an election to intervene should be extended.

3
4 Respectfully submitted,

5 BRIAN J. STRETCH
6 United States Attorney

7 Dated: August 2, 2016

By:


8 GIOCONDA R. MOLINARI
9 Assistant United States Attorney
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28 U.S.' NOTICE OF ELECTION TO DECLINE INTERVENTION; [PROPOSED] ORDER
No. CV-13-2345 KAW

**~~PROPOSED~~ ORDER RE: UNITED STATES' DECLINATION TO INTERVENE; ORDER TO
EXTEND SEAL AND INTERVENTION DEADLINE**

The United States, the States of California, New York, and North Carolina, having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), and the respective state false claims statutes, respectively, it is hereby Ordered that:

1. The seal and intervention deadline in this action is extended to August 31, 2016;
2. The Complaint in this action, this Order, and the accompanying United States' Notice of Election to Decline Intervention and Request for Enlargement of Time, shall be unsealed on September 1, 2016. All other sealed contents in the Court's file shall remain under seal and not be made public or served upon defendant;
3. Thereafter, relators shall serve the Complaint, this Order and the accompanying United States' Notice of Election to Decline Intervention and Request for Enlargement of Time upon defendant;
4. The seal is lifted as to all other matters occurring in this action effective September 1, 2016;
5. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States and the above named States may order any deposition transcripts and are each entitled to intervene in this action, for good cause, at any time;
6. The parties shall serve all notices of appeal upon the United States;

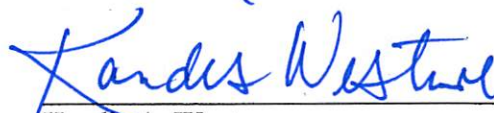
U.S.' NOTICE OF ELECTION TO DECLINE INTERVENTION; ~~PROPOSED~~ ORDER
No. CV-13-2345 KAW

1 7. All orders of this Court shall be sent to the United States; and

2 8. Should the relators or the defendant propose that this action be dismissed, settled, or
3 otherwise discontinued, the Court will provide the United States and the above named States with notice
4 and an opportunity to be heard before ruling or granting its approval.
5

6 IT IS SO ORDERED:

7 Dated: 8/2/16


Kandis A. Westmore
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

The United States and the States of
California, Texas, New York, North
Carolina,
ex rel. Randy Reagan and James
Longfield,
Plaintiff(s),

No. C13-2345 KAW

CERTIFICATE OF SERVICE

v.
MedTest Dx, Inc.,
Defendant(s).

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 2, 2016, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy into an inter-office delivery receptacle located in the Office of the Clerk.

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Civil Division
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Ninth Floor, Box 36055
San Francisco, CA 94102-3495

Justin Theodore Berger
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SUSAN Y. SOONG, CLERK

BY: Susan Imbriani
Susan Imbriani, Courtroom Deputy